



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

IBPO Local 314

Complainant

v.

City of Somersworth

Respondent

Case No. P-0705-11

Decision No. 2001-024

PRE-HEARING DECISION and ORDER

The IBPO Local 314, ("Union") filed unfair labor practice charges on February 26, 2001 pursuant to RSA 273-A:5 I (a), (c), (d), (e) and (g) alleging that the City of Somersworth, ("City"), through the actions of its Police Chief unilaterally changed and/or altered terms and conditions of employment without negotiating the same in breach of the parties' Collective Bargaining Agreement ("CBA") and the statute as referenced above. Further, the Union alleges that the City has retaliated against the Union for exercising its rights to pursue grievances to arbitration and has violated past practice in failing to compensate a member for her jury time and thereby unilaterally established a term or condition of work otherwise subject to negotiation. Finally, the Union alleges that the City has unilaterally changed the hours of work and scheduling practices of unit personnel and by such conduct restrained and coerced members in the exercise of their statutory rights.

The Union requests relief in the form of a Board finding that the City did commit improper practices and requests that the Board issue a cease and desist order prohibiting such conduct in the future and ordering the City to negotiate any changes in terms and conditions of work alleged herein. Further, the Union requests that the Board's order make employees whole for any and all wages and benefits lost, including pay for jury duty and overtime, and reimburse the Union for any and all costs and attorney fees required by the instant proceedings. Lastly, the Union requests that the cease and desist order be posted within the workplace.

The City of Somersworth, in its answer, admits that the City has undertaken certain changes but that such changes either fall within their management rights, or are protected under the provisions of a separate set of Personnel Rules. It denies that such action violates the CBA or past practices or constitutes statutory violations amounting to an improper practice and asks the Board to dismiss the Association's complaint. Further, the City, in essence, cross-complains against the Union for filing its unfair labor practice complaint without first going through the grievance process in violation of the parties CBA.

PARTICIPATING REPRESENTATIVES

For the Complainant: Peter C. Phillips, Esq., IBPO Counsel

For the Respondent: Renny Perry, Labor Relations Consultant

ISSUES FOR DETERMINATION BY THE BOARD

1. Whether or not under the terms of the parties' Collective Bargaining Agreement ("CBA"), the Complainant must complete steps of the Grievance Procedure provision before seeking relief from the Public Employees Labor Relations Board? If so, has the Union committed an unfair labor practice in bringing the instant complaint before the PELRB at this time? (Parties agree to waive testimony on this issue and to submit a Statement of Agreed Facts and respective Memoranda of Law in support of their respective positions prior to the scheduled hearing and consistent with the schedule contained herein.)
2. Whether or not the City committed an unfair labor practice in failing to negotiate in good faith when it changed certain shift rotations without notice or opportunity to bargain being given to the Union? Whether or not the City undertook such action in retaliation against the Union for pursuing a grievance on or about August 18, 2000 regarding, *inter alia*, certain terms related to overtime computation and thereby restrained and coerced employees in the exercise of rights conferred by RSA-A:5 I (a)?
3. Whether or not the City committed an unfair labor practice in the manner by which they paid or failed to pay a Parking Enforcement Officer for time spent on jury duty and thereby changed a past practice constituting an existing term or condition of employment without bargaining with the Union in violation of RSA-A:5 I (e) and (g) and further thereby restraining and coercing employees in the exercise of their rights conferred by RSA-A:5 I (a)?
4. Whether or not the City committed an unfair labor practice in failing to negotiate in good faith when it established certain hours of work and work schedules affecting bargaining unit personnel in violation of RSA 273-A:5 I (e) and (g) and further

thereby restrained and coerced employees in the exercise of their rights conferred by RSA-A:5 I (a)?

WITNESSES

For the Complainant:

1. William Lemoi, Department Prosecutor and Local President
2. Diane Flaherty, Parking Enforcement Officer

For the Respondent:

1. Dean Crombie, Chief
2. Capt. Daniel Donovan

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Complainant Union:

1. Collective Bargaining Agreement
2. Letter from Lemoi to Crombie, dated August 31, 2000
3. Memo from Crombie to Union grievants, dated 9/6/00

For the Respondent City:

1. Collective Bargaining Agreement
2. City Personnel Rules
3. Work Schedules
4. Arbitration Award, PELRB P-0705:9, dated 3/14/01
5. Post-hearing brief submitted in support of above-referenced case

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is

to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

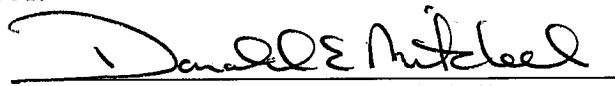
LENGTH OF HEARING

The time being set aside for this hearing is one-half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than May 2, 2001.

DECISION

1. The parties shall submit an original and five copies of a jointly executed Agreed Statement of Facts related to the jurisdictional issue raised by the City and their respective Memoranda of Law in support thereof to the Board no later than May 2, 2001. Any necessary and responsive supplementary Memoranda of Law to be filed by either party shall be filed prior to the start of the scheduled hearing.
2. The party representatives shall forward any amendments of their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than May 2, 2001. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
3. The parties shall meet and confer to compile a report, by chart or by narrative memorandum, expressing a mutually agreed or respective computation of damages in the form of lost wages and other compensation in the event the Union prevails. This potential exhibit or these exhibits shall be available in sufficient number for submission to the Board at the evidentiary hearing.
4. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than ten (10) calendar days prior to the scheduled hearing date.
5. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Tuesday May 8, 2001 beginning at 9:30 A.M.

Signed this 10th day of April, 2001.


Donald E. Mitchell, Esq.
Hearings Officer